

Attachment B: Excerpt of the Draft Minutes of the Planning Commission Meeting of March 15, 2012

Item 7A: Public Hearing

Proposed amendments to Article 19 Landscape Requirements, Sections 4-1904, 1908 and 1910 of the Zoning Code, related to Bay-Friendly Landscaping. (Barros)

Planner Barros said that the proposed amendments to the Zoning Code Article 19 are relatively minor and relate to a mandate from the Alameda County Waste Management Authority, StopWaste.org. Planner Barros indicated that two years ago, the City modified landscape requirements to comply with a State of California decree under AB 1881 for water-efficient landscaping. The San Leandro ordinance follows the State's WELO (Water Efficient Landscape Ordinance) model, which contains substantial data that is required of landscapers.

The 2010 San Leandro ordinance also incorporated certain StopWaste.org, Bay-Friendly Landscaping protocols, but now further minor changes are needed to ensure that San Leandro continues to qualify for more than \$100,000 in mitigation funds for the next fiscal year. Planner Barros referred to a letter in the Planning Commission packet from StopWaste.Org which outlined the current countywide mandate. Accordingly, she recommended adding two elements to San Leandro Zoning Code Article 19, Landscape Requirements:

- Locate plants to grow to natural size – This is already in the code as recommended design feature; the proposal now is to make it a requirement.
- Divert 50% of landscape Construction & Demolition (C&D) debris – The City's current C&D Ordinance requires recycling of 50% of C&D debris for projects valued at \$100,000 and up, but some projects below that amount may trigger the Bay-Friendly Landscaping provisions so it should be included in the Landscape Ordinance as well. The existing trigger in Article 19 is based on the size of the landscaping project: 2,500 square feet for commercial, industrial and developer-installed residential projects, or 5,000 square feet for other residential projects.

In response to a question from **Commissioner Rennie**, Planner Barros said that the size thresholds are based on State requirements. She pointed out that a project may be 2,500 square feet in size but under \$100,000 in value, so to ensure satisfying the StopWaste.org mandate, the C&D debris diversion requirement should be included in Article 19.

Planner Barros also indicated that the proposed changes are consistent with General Plan policies, including Policies 26.02 Mitigation of Development Impacts, 26.06 Intergovernmental Coordination, 27.02 Water Conservation and 27.03 Drought-Tolerant Landscaping. In addition, she said, the General Plan's Conservation Element contains goals of working toward water and energy efficiency. Staff requests Planning Commission support of the recommended amendments so the proposal can go before the City Council on April 16, 2012.

Commissioner Dlugosh, noting that the \$100,000 amount in the C&D ordinance dates back to 2003, said that \$100,000 may now be too low and at some time it may be appropriate to modify the valuation unless that's the amount mandated by State law. Planner Barros said landscaping ordinances and green building for civic projects contain escalation clauses that tie figures to construction cost indices and that is probably the case for the C&D ordinance as well. She said she would check.

Chair Collier asked whether the trigger amount represents the total value of the whole project or the landscaping only. Planner Barros said that the current thresholds are not related to any

monetary value, but only the size of the landscaping project, whether newly installed or rehabilitated.

Commissioner Fitzsimons asked about the reasons for striking items from Section 4-1908-E. Senior Planner Barros explained that #2 and #11 are being removed because they are repetitious, and #6 was moved to Section 4-1910(B) as a required standard.

Commissioner Rennie said that he was distracted by the ordinance as a whole as opposed to the modest proposals for changes. While he has no issue with the changes proposed, the ordinance itself could make it much clearer how the requirements apply. As a matter of principle, he said it's better to make requirements understandable by a lay person, so it would at least be appropriate to clarify the trigger.

Planner Barros explained that the trigger is on the first page of the existing Article 19, under General Requirement in Section 4-1902. Specified by WELO, the existing requirements are effectively targeted to professional landscapers. The City has no licensed landscape architect on staff, and instead of having to contract with one to review projects in consultation with the developer's landscaper and thus burdening a developer with the cost of hiring two licensed landscapers, the practice has been to require applicable projects to engage licensed landscape architects. These professionals must sign letters indicating their compliance with the ordinance. Planner Barros acknowledged that the ordinance is very technical and highly detailed. In the case of the San Leandro landscape ordinance, she said that it's actually a simplified version of the WELO, incorporating the longer State document by reference.

Commissioner Hernandez asked whether the proposed changes would have any significant impact on developers. **Planner Barros** said the changes are minor, making native plantings a requirement. Most large projects probably already comply with the C&D changes. Tipping (disposal) fees are such that developers prefer recycling C&D materials rather than taking them to the dump. **Chair Collier** pointed out that tipping fees have increased from \$13 to \$39 per truckload.

Commissioner Rennie said he appreciates the explanation so that he knows who's expected to understand the ordinance's technical content. In terms of Section 4-1904(A), though, he said the City should make it understandable to staff and the public as to when the trigger hits. As an example, he said, if he lived in a home that had a developer-installed landscape 10 years ago and he wants to rehabilitate it does he have to comply with this ordinance?

Planner Barros said no, the trigger is spelled out in Section 4-1902 General Requirements. She pointed out, too, that in the two years this ordinance has been on the books there have been no issues related to homeowners being confused by it. Further, she said, developers who have to comply with the ordinance have landscape architects who are well-acquainted with WELO, partly because it is in effect in one form or another throughout the State.

In response to **Commissioner Fitzsimons's** asking for confirmation that this ordinance applies only to projects that require Site Plan Approval, she said no, the ordinance applies to "applicable large landscape projects *and* projects for which Site Plan Approval is required." Large landscape projects, she continued, would exceed 2,500 square feet if commercial, industrial or developer-installed residential, or 5,000 square feet in other residential landscaping.

Commissioner Fitzsimons then asked whether this article would apply if he had a 5,100-square-foot back yard that he wanted to change. She confirmed it would if the entire back yard is landscaped. Planner Barros also confirmed Commissioner Fitzsimons's understanding that the Zoning Enforcement Official (ZEO) could waive these provisions if Commissioner Fitzsimons wanted to rehabilitate only 500 square feet of his 5,100-square-foot back yard.

Commissioner Reed asked who on staff would be able to discuss the ordinance requirements if a homeowner approached with questions. Secretary Barros said that the planners have all been briefed on the ordinance and would probably handle that, but from a practical standpoint, very few single-family properties in the City are large enough to come under the ordinance. She said in her 10 years at the permit counter, she's not yet seen a resident coming in to do 5,000 square feet of landscaping projects on a single-family property.

Commissioner Reed commented that the ordinance seems over-complicated, with a lot of provisions that could cause mischief. He said that he's concerned about recommending something that will come back to haunt us. He also said that he personally would not want to have to hire a licensed landscape architect.

Commissioner Dlugosh asked whether landscaping included swimming pools. **Commissioner Rennie** asked whether landscaping is the same as planting material, or whether it includes decks and hardscape areas.

Checking Zoning Code Article 3 Definitions, **Planner Barros** said that landscaping includes planting materials as well as decorative outdoor landscape elements, pools, fountains, water features, paved or decorated surfaces of rock, stone, brick, block or similar material and sculptural elements.

Chair Collier said then that all concrete patios would be included as well.

Planner Barros reassured the Planning Commission that there have been no issues with any residential properties, whether developer-installed or private. She recalls only four projects that have been subject to this ordinance in the past two years, including Kaiser and some large commercial properties on Teagarden Street. All had licensed landscape architects who readily interpreted the code and worked with staff with no problems.

Commissioner Dlugosh said that considering all that's covered by the term "landscaping," the triggers are relatively low. As a consequence, people would have to hire a landscape architect in those cases. He said that under those circumstances, hiring that professional would drive the cost high enough to hit the trigger. He said that bothers him, as does over-burdening residents by making simple projects very complicated and overly expensive.

Planner Barros said the Planning Commission and the City Council reviewed the triggers before the ordinance was passed in 2010, and because they are part of the State mandate, the triggers are not something over which the City has any discretion in any case. At this time, Alameda County Waste Management Authority is asking all local jurisdictions to use the same triggers.

Commissioner Rennie went back to applicability of the ordinance to a single-family property. He said that it's not hard to hit the trigger point, if a homeowner with a 6,000-square-foot lot has a home with a 1,000-square-foot footprint. That leaves 5,000 square feet on the lot. He said questions may not come to the counter because people don't think they have to come to the City to change their garden or plant some trees.

Chair Collier said most projects that affect coverage of a lot require submission of plot plans. Upon reviewing a plot plan, the Building Department staff would be able to advise whether the project requires conformance with the landscape ordinance.

Commissioner Rennie said he understands the plot plan requirement, but he's not talking about a building. **Planner Barros** said the scenario he described would not trigger the ordinance. She also noted that most single-family homes in San Leandro are on 5,000-square-foot lots, and most houses have footprints of about 1,500 square feet. She said staff reviewed this data while working on the draft ordinance in 2009, including discussions with the Planning Commission. Again, she reiterated that these triggers are mandated by the State.

Chair Collier pointed out that quite a few corner lots have more than 5,000 square feet.

Commissioner Fitzsimons said that if the Planning Commission has the liberty of making any changes to the ordinance outside the State-mandated elements and beyond the scope of the changes that staff proposes, someone should make a motion for such changes to vote on.

Assistant City Attorney Pio Roda clarified that the agenda item covers only the amendments proposed. He said that if the Planning Commission chooses to review the rest of the ordinance, the item should be placed on the agenda for another meeting.

Chair Collier opened the public hearing.

Joe Collier, 644 Douglas Drive, asked if the proposed ordinance would be applicable to a residential project that involved paving over the front yard, referring to a property near his home where the owner dug out the entire front lawn and dirt and then replaced it with concrete. He said six cars park there, plus two in the street. He said he'd like to see something in this ordinance to prevent such modifications.

Planner Barros indicated that at its January 19, 2012 meeting, the Planning Commission reviewed a proposed Zoning Code amendment that limits paving to a maximum of 50% of the front-yard setbacks. The City Council adopted that amendment at its February 21, 2012 meeting, and it will go into effect on April 3, 2012. Projects completed prior to that date would be grandfathered.

Motion to close the Public Hearing

Dlugosh/Fitzsimons: 6 Aye, 0 No, 1 Absent (Abero)

Motion to forward to the City Council a recommendation to approve the resolution proposing Zoning Code amendment changes related to Bay-Friendly Landscaping Provisions (Article 19, Sections 4-1904, 1908 and 1910)

Fitzsimons/Hernandez: 6 Aye, 0 No, 1 Absent (Abero)